

EXECUTIVE OFFICER SUMMARY REPORT
December 11, 2002

ITEM: 9

SUBJECT: **PUBLIC HEARING** (formal): Complaint No. R9-2002-0331 for administrative assessment of civil liability for failure to submit technical reports required pursuant to Water Code section 13267, against the City of San Diego, AMEC Earth and Environmental, and Tri-County Drilling, Inc. (*Barry S. Pulver*)

PURPOSE: To hold a formal hearing to receive testimony from the City of San Diego (City), AMEC Earth and Environmental (AMEC), Tri-County Drilling, Inc. (Tri-County), Regional Board Staff, the Public, and Interested Parties regarding the allegations and recommendations for administrative civil liability contained in Complaint R9-2002-0331 (*Supporting Document 1, Staff Exhibit 1b*), and consider adoption of tentative Order No. R9-2002-0381 (*Supporting Document 2*).

PUBLIC NOTICE: A notice of this hearing was mailed to Designated and Interested Parties on October 23, 2002 (*Supporting Document 1 – Exhibit 1c*). The Designated Parties were provided with copies of staff exhibits (*Supporting Document 1; excluding exhibits by reference*) on November 20, 2002.

DISCUSSION: The Regional Board issued Complaint Number R9-2002-0331 for civil liability against the City, AMEC, and Tri-County (collectively referred to as the Parties) on October 23, 2002. The complaint alleges that the Parties failed to submit a preliminary site conceptual model (**Violation 1**) and a workplan to conduct a soil and groundwater investigation (**Violation 2**) of the discharge of petroleum hydrocarbon wastes from a ruptured underground fuel pipeline, as required by the Regional Board pursuant to Water Code section 13267 (*Supporting Document 1 – Exhibit 1a*). The required reports were due on January 25, 2002. The reports were submitted by the City to the Regional Board on November 5, 2002, 283 days late and thirteen days after the Complaint was issued.

The discharge occurred when Tri-County ruptured an underground gasoline pipeline during the drilling of a soil boring on February 1, 2001. Tri-County was a contractor to AMEC, a consultant hired

by the City to conduct a geotechnical investigation along Belt Street. AMEC directed Tri-County to drill the soil boring at a location (*Supporting Documents 3 and 4*) that resulted in the pipeline rupture. The pipeline is an eight-inch diameter, steel, underground, fuel pipeline owned and operated by Chevron Products Company (Chevron). The rupture of the pipeline caused an immediate release of an estimated 2,730 gallons of unleaded gasoline to the surface, and into soil and groundwater.

The purpose of the requested reports was to develop a soil and groundwater investigation that when implemented would adequately evaluate the potential risk of the discharge to water quality of San Diego Bay, human health and the environment. The information obtained from the implementation of the soil and groundwater investigation will allow the Regional Board to determine the potential impact to the beneficial uses of San Diego Bay, and to determine the appropriate activities to cleanup the discharge.

The Parties continue to deny responsibility for the discharge because of contractual agreements between the parties, and because Chevron failed to register the pipeline with Underground Service Alert as required by State law. However, in a previous hearing, the Regional Board found (*Supporting Document 1 – Exhibits 1e and 1l*) that the Parties caused or permitted the discharge because the contractual agreements indemnifying the Parties from liability are not binding on the Regional Board. Further, AMEC and Tri-County did not follow the professional standard practice of care in conducting the geotechnical investigation by not requesting copies of previous geotechnical reports from the City and by not conducting a geophysical utility survey which would have located the pipeline. Further, Chevron's responsibility for the discharge due to failure to register the pipeline was mitigated because it previously provided the City with maps showing the location of the pipeline.

The potential minimum and maximum liability, and the recommended liability for the violation are shown below.

Days of Violation	Liability		
	Minimum	Maximum	Recommended
283	\$0.00	\$775,000.00	\$113,200

A summary of the factual and analytical evidence supporting the proposed civil liability for the violations is presented in the staff

technical analysis (*Supporting Document 1 – Exhibit 2*). The recommended civil liability is based on the nature, circumstance, extent and gravity of the violations, the potential threat to water quality from the discharge, the conduct of the Parties, their ability to pay and remain in business, and other matters as justice may require.

The nature of the violations is the failure to submit the two reports. Violation of an Order of the Regional Board is a very serious offense; thus the gravity of these violations is high. A circumstance of the violations is the significant expenditure of staff resources to enforce the investigative order, which interfered with the Regional Board's ability to implement the Aboveground Petroleum Storage Tank Program.

The potential threat to water quality from the discharge is the impact to the beneficial uses of San Diego Bay. Those uses which could be affected by the discharge include contact water recreation, commercial and sport fishing, marine habitat, wildlife habitat, rare, threatened or endangered species, and shellfish harvesting.

The conduct factors of the Parties include degree of culpability, any voluntary cleanup efforts undertaken, the Parties' cooperation in returning to compliance, and the Parties' prior history of violations. The Parties are fully culpable because they were well aware of the requirements for the reports and had the means to produce them, but deliberately did not. In addition, the Parties continued to deny responsibility for the discharge and for providing the reports, resulting in unacceptable delays in complying with an order of the Regional Board and increasing the risks to water quality. Finally, through inaction and delays, the Parties have not acted in good faith to protect water quality from the effects of the pipeline rupture.

With the exception of limited emergency response activities, the Parties did not undertake any voluntary cleanup activities. Rather, Chevron removed petroleum hydrocarbon-bearing soil and free product from the water table from February to March 2001. The Parties have not demonstrated any substantial cooperation to comply with the investigation order. It wasn't until the Regional Board contacted the Mayor's office that the City indicated it would prepare the required reports. Subsequently, the City took 88 days to approve a proposal with its consultant to prepare the reports. Finally, the reports were submitted to the Regional Board only after the Complaint was issued, and 70 days after the City approved the proposal to conduct the work. These factors and

others are thoroughly discussed in the staff technical report
(*Supporting Document 1 – Exhibit 2*).

The total staff costs incurred by the Regional Board and Office of Chief Counsel to prepare the Complaint and hearing documents in support of the recommended civil liability is estimated to be \$22,400.

Considering these factors the proposed civil liability is assessed at \$200 per day for 283 days of violation for each of two violations for a total of \$113,200.

LEGAL CONCERNS: There are no legal concerns.

SUPPORTING DOCUMENTS:

1. Staff Exhibits – See attached Exhibit List
2. Tentative Order No. R9-2002-0381
3. Site Vicinity Map
4. Site Plan
5. City of San Diego Hearing Documents Opposing the Assessment of Civil Liability
6. AMEC Earth and Environmental Hearing Documents Opposing the Assessment of Civil Liability
7. Tri-County Drilling, Inc., Hearing Documents Opposing the Assessment of Civil Liability

RECOMMENDATION: Adopt Tentative Order No. R9-2002-0381